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HB 130

REVISE UNINSURED EMPLOYER'S FUND LAWS

REPRESENTATIVE STEVE FITZPATRICK

SPONSOR'S PACKET

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SPONSOR OPENING REMARKS

HOUSE BUSINESS AND LABOR COMMITTEE

JANUARY 11, 2013

Mr. Chairman, members of the committee, I am Steve Fitzpatrick, representative from District 20 in Great Falls. I am here before you today to present a bill requested by the Department of Labor and Industry.

HB130 makes revisions to the Uninsured Employers Fund laws amending several sections in Title 39, Chapter 71, and Part 5 of the Montana Workers' Compensation Act.

The Uninsured Employers Fund is administered by the Employment Relations Division of the Department of Labor and Industry and serves two functions under the law. 1) Bring uninsured employers into compliance with the mandatory workers' compensation insurance requirement and 2) Pay benefits to injured workers of uninsured employers.

The source of funding for these functions is from penalties assessed to uninsured employers at twice the premium they would have paid if they'd been properly insured plus reimbursements from uninsured employers for the costs of the benefit payments. Benefits to injured workers from the Fund may be prorated and reduced depending on the amount of money in the fund. The payment of medical benefits on an individual claim is capped at \$100,000. Benefit payments are not guaranteed by the Fund and since the employer is uninsured at the time of the injury, the employer is not protected by exclusive remedy. Injured workers may pursue all remedies including damage and civil remedies concurrently with filing a claim with the Uninsured Employers Fund.

This bill originated in the Department because recent case law resulting from claims filed with the Uninsured Employers Fund has indicated there is ambiguity in how the statutes related to the Uninsured Employers Fund are interpreted.

Currently, the law states "all appropriate provisions in the Workers' Compensation Act (WCA) apply to the fund in the same manner as they apply to" all insurers providing work comp coverage in Montana. The fund is not an insurer. It is not funded like an insurer. It doesn't operate like an insurer. It doesn't issue policies that create a contract between an insurer and a covered employer. The Uninsured Employers Fund is intended to be a "safety net" for workers and may only provide limited benefits based on the revenue available in the fund.

Workers injured while working for uninsured employers are not entitled under the Act to the same benefits as covered workers. They also have independent remedies they can pursue directly against the uninsured employer while concurrently filing a claim for benefits with the Uninsured Employers Fund. Workers, who file claims with workers' compensation insurers pursuant to a policy between the insurer and the employer, are subject to the exclusive remedies under the WCA. They don't have independent remedies under the law.

This bill is intended to clarify the ambiguity in the statutes in an effort to decrease disputes and litigation resulting from claims filed with the Uninsured Employers Fund.

HB130 will:

- Provide the clear legislative intent that the Uninsured Employers Fund is not an insurer and is intended to be a safety net for injured workers of employers that do not properly obtain workers' compensation coverage.

- Clarify which provisions of the WCA apply to the Uninsured Employers Fund and which sections don't apply.

- Clarify that injured workers, worker's beneficiaries, and uninsured employers are a party to disputes regarding payment of benefits including denial of benefits and disputes over whether an uninsured employer is liable to indemnify the Uninsured Employers Fund.

These clarifications will reduce the ambiguity of the laws related to the Uninsured Employer Fund claims, reduce disputes, and provide clear guidance to the Courts about the applicability of these provisions to the Uninsured Employers Fund.

The department is requesting one amendment to delete New Section 9 – the Retroactive Applicability. This section is being deleted to prevent any unintended consequences that could lead to additional litigation.

Mr. Chairman, there are representatives of the Department here who will explain the details of the bill and the department amendment. I look forward to a good hearing, and I reserve the right to close.

SPONSOR CLOSING REMARKS

In summary, about 50 workers per year are injured while working for uninsured employers. This bill will make the process of administering these claims clear. It also clarifies the process for the employers who did not properly cover workers with a workers' compensation policy. No other employers or workers in Montana will be impacted by these changes.

Mr. Chairman, members of the committee, I thank you for a good hearing. I would ask for your support of HB130 with the amendment offered by the Department.

HB130 SUMMARY

Presented by Diana Ferriter, ERD Administrator

There are hundreds of statutes in Montana's current Workers' Compensation Act and when one of us reads a specific statute, it's usually clear who's impacted by it. The law spells out the rights and responsibilities of an employer, an insurer, a medical provider, a worker, the department, the Court, etc.

Except for Part 5 of the Workers' Compensation Act which is specific to the Uninsured Employers Fund, it's not always clear which of the other hundreds of statutes apply to the Uninsured Employer's Fund. So, again, the intent of this bill is to clear up that ambiguity.

Section 1. of the bill amends section 39-71-501. The change clarifies that for purposes of the entire Workers' Compensation Act the term "uninsured employer" means an employer that has not complied with the mandatory coverage requirement.

Section 2. of the bill amends section 39-71-503. The change provides the legislative intent that the Fund is a "safety net" and not an insurer and doesn't operate like an insurer. It also clarifies that all disability payments are paid monthly and not biweekly which is required of insurers. The monthly payment is necessary because the available money in the Fund is evaluated on a monthly basis to determine whether or not sufficient money is available to pay 100% of disability benefits due or if the benefits need to be pro-rated to all injured workers.

Section 3. of the bill amends section 39-71-505. This is the section in current law that does not give enough guidance. The current language "all appropriate provisions" that the current section applies in the same manner as insurers does not clearly inform workers, employers, and the Courts which provisions apply to the Fund since it isn't an insurer and doesn't operate like an insurer.

So, to clarify which sections of the Work Comp Act apply to UEF and which sections don't apply, HB130 lists the provisions by section number.

(1) Lists all the provisions in the Act that use the term "insurers" that apply to both insurers and the UEF. These sections apply to UEF because they are used to examine a claim. For example these provisions include:

- prompt action on claims; definitions of employee, employer, fraud, employments covered and exemptions
- limitations of liability
- presentment of claims; independent medical examinations; investigation and acceptance of claims; suspension of benefits; accepting under a reservation of rights; denying a claim or terminating benefits
- compensation for TPD,TTD, PTD, PPD, death, disfigurement; payment of medical bills; and various other benefits
- provisions for vocational rehabilitation services and benefits
- choice of treating physician; treatment by designated providers; managed care organizations; preferred provider organizations
- dispute resolution process through mediation
- catastrophic injury travel assistance act

(2) Lists all the provisions in the Act that use the term "insurers" that don't apply to the Uninsured Employers Fund. These provisions don't apply because the Fund is not an insurer and doesn't operate like an insurer. The Fund operates as a state agency administering a statutory responsibility. For example:

- Notice requirements if using third-party agents
- Payment of Administration Fund assessment; requirement to report claim and benefit data to department

- Financial incentives to employers to institute safety programs ; group purchase of work comp insurance; optional deductibles on issuing policies
- Provision to pay compensation biweekly;
- Costs and attorney fee payment provisions;
- Stay at work/return to work assistance process
- Certification of managed care organizations
- All provisions related specifically to private insurance companies
- Increase in benefits for unreasonable delay or refusal to pay

You may hear opposition to two provisions in this subsection, specifically, subsections (2)(e) and (2)(i) - the costs and attorney fee payment provisions and the increase in benefits for unreasonable delay or refusal to pay. These subsections may be opposed by injured worker representatives. A recent Court case found UEF unreasonable in its actions related to adjusting the claim and ordered payment of a 20% penalty in additional benefits and payment of the injured worker's attorney fees and costs. Although this case is the only one that the Court has ordered a penalty and attorney fees and costs against the UEF, and the Department doesn't agree with all of the findings in the case, the Department is concerned that this decision will cause attorney fees and costs to become part of every disputed UEF claim. We have already started to see this tendency developing. UEF does not want to use the time, resources, and money defending requests for attorney fees and penalties when that money reduces the total money available for benefit payments. Instead, the Department is committed to making sure UEF claims are reasonably adjusted and that best practices are established and followed for UEF claims investigations and benefit payments.

(3) This change clarifies that all other provisions of the WCA that do not use the term "insurer" still apply to all insurers and the UEF, except for the sections listed in the bill:

- Payment of compensation biweekly
- Payments from the industrial accident rehabilitation account
- Subsequent injury fund provisions
- Montana Safety Culture Act

For different reasons these exceptions don't fit into the statutory and operating functions of UEF.

Section 4 of the bill amends section 39-71-515. This change clarifies that the Court has jurisdiction when two petitions are filed concurrently in District Court and the Workers' Compensation Court.

Section 5 of the bill amends section 39-71-516. This change clarifies that the Court has jurisdiction when two petitions are filed concurrently in District Court and the Workers' Compensation Court.

Section 6 of the bill amends section 39-71-541. These changes clarify that in a petition filed in the Workers' Compensation Court, the alleged uninsured employer, the injured worker, and the UEF must be named as parties to a dispute over benefits, including denial of liability by UEF and a dispute over whether an alleged uninsured employer is liable to indemnify the UEF.

Section 7 of the bill is the saving clause.

Section 8 of the bill provides the effective date.

Section 9 of the bill applies retroactively to claims filed on or after July 1, 1993. The department is offering an amendment to this section that deletes this retroactive applicability from the bill to prevent unintended consequences.

◆ UNINSURED EMPLOYERS' FUND

Exhibit 5.5

Uninsured Employers' Fund
Financial Activity by Fiscal Year of Payment

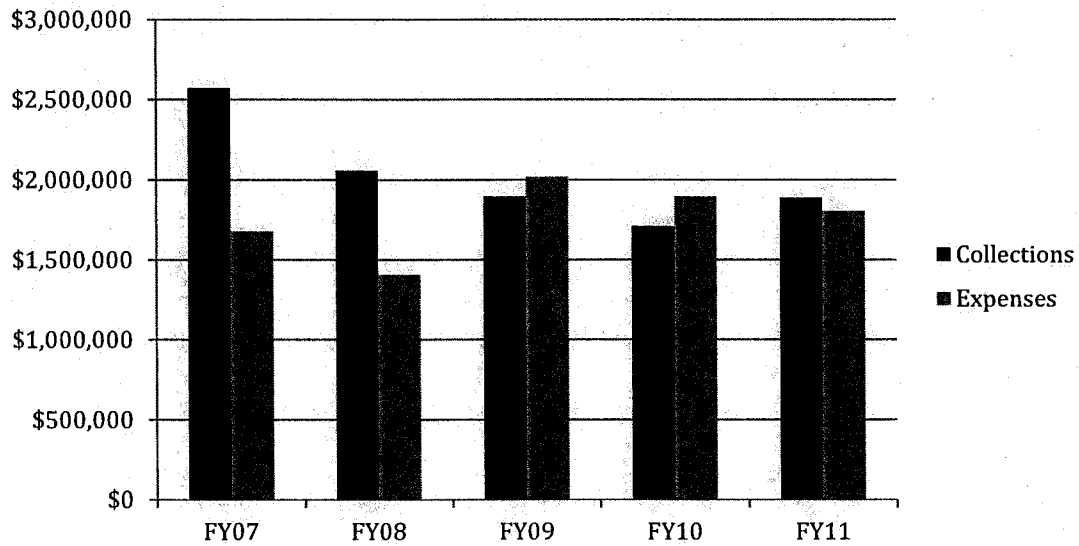


Exhibit 5.6

Uninsured Employers' Fund
Financial Activity by Fiscal Year of Payment

	FY07	FY08	FY09	FY10	FY11
Collections	\$2,574,227	\$2,056,374	\$1,896,480	\$1,710,987	\$1,888,138
Expenses	\$1,682,811	\$1,405,350	\$2,018,128	\$1,897,882	\$1,805,304

UNINSURED EMPLOYERS' FUND ◆

Exhibit 5.7

UEF Medical and Indemnity Payments

By Fiscal Year of Payment

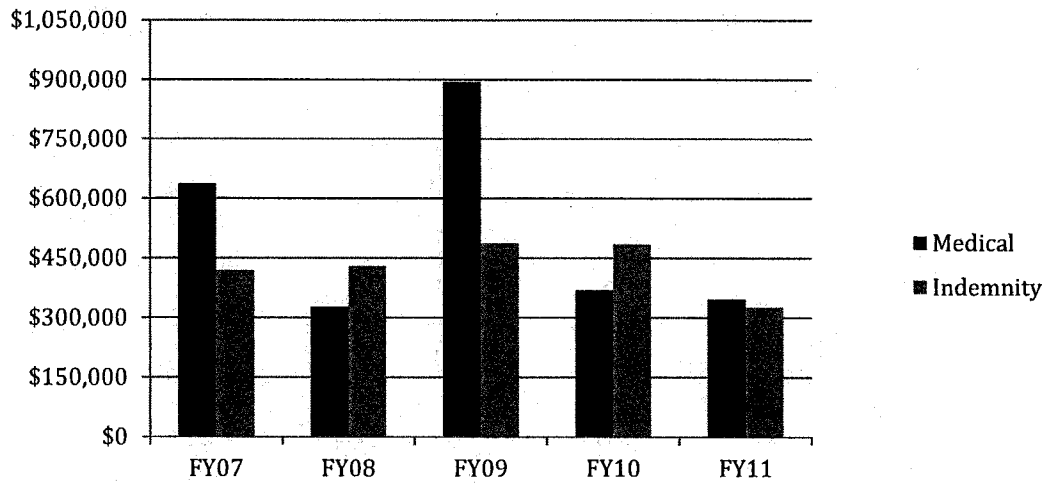


Exhibit 5.8

UEF Medical and Indemnity Payments

By Fiscal Year of Payment

	FY07	FY08	FY09	FY10	FY11
Medical	\$637,303	\$327,124	\$893,731	\$369,617	\$347,370
Indemnity	\$419,541	\$430,178	\$487,813	\$485,124	\$326,599